Remarks

The Office Action rejects Claims 32, 57-61, and 77 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,353,788 to Miles in view of U.S. Patent No. 6,000,395 to Brown. The cited references, separately or in combination, do not disclose or teach of a headgear having EEG sensors thereon which are positioned to detect EEG signals. Furthermore, there is no motivation which would lead one skilled in the art to combine the two cited references.

We agree with the Office Action which states on page 4 that

> "Miles teaches essentially all of the limitations except for a headgear adapted to retain the the body on the patient's head, the headgear having at least one EEG sensor positioned thereon." (emphasis added)

Brown discloses an avalanche and hypothermia suit which is activated by sensors located in a user's helmet. The sensor's are located on a housing which is integral to the helmet. Brown does not disclose or teach of using EEG sensors in the helmet.

We submit that the Office Action fails to provide any teaching or motivation which would enable one skilled in the art to combine the two cited references. "[B]road conclusory statements about the teaching of multiple references, standing alone, are not 'evidence.'" *Brown & Williamson Tobacco Corp. v. Philip Morris, Inc.*, 229 F.3d 1120. "When an obviousness determination is based on multiple prior art references, there must be a showing of some teaching, suggestion, or reason to combine the references." *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1348 (Fed. Cir. 2000). "A showing

that the motivation to combine stems from the nature of the problem to be solved must be 'clear and particular, and it must be supported by actual evidence.'" *Group One, Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297, 1304 (Fed. Cir. 2005) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1334 (Fed. Cir. 2002)). 1125 (Fed. Cir. 2000).

The invention in Miles is used for monitoring a patient during apnea treatments. Brown's invention was an avalanche/hypothermia suit intended for a totally non-analogous use. We submit that the Office Action fails to cite with the requisite specificity any motivation or teaching which would lead one skilled in the art to combine the two non-analogous inventions to create a headgear adapted to retain a body on the patient's head, the headgear having at least one EEG sensor positioned thereon. As such, we request that the rejections to claims 32, 57-61, and 77 be removed.

Claims 62-66, 68, 69-71, 73-76, and 79-83 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,353,788 to Miles in view of U.S. Patent No. 6,000,395 to Brown. For the reasons cited above, we respectfully disagree that these claims are unpatentable in view of Miles and Brown. The Office Action fails to cite with the requisite specificity any motivation or teaching which would lead one skilled in the art to combine the two non-analogous inventions to create a headgear adapted to retain a body on the patient's head, the headgear having at least one EEG sensor positioned thereon. As such, we request that the rejections to claims 62-66, 68, 69-71, 73-76, and 79-83 be removed.

Conclusion

Applicant respectfully submits that the subject application is in condition for allowance, and allowance thereof is kindly requested. Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the claims to proceed to allowance, the Examiner is invited to contact the undersigned attorney at the Examiner's earliest convenience.

Respectfully submitted,
COMPUMEDICS LIMITED,
by its Attorneys

Dated: March 1, 2006

John F. Klos
Registration No. 37,162
Aleya R. Champlin
Registration No. 36,251
FULBRIGHT & JAWORSKI L.L.P.
80 South Eighth Street, Suite 2100
Minneapolis, MN 55402-2112
Telephone: (612) 321-2800